Office-Supreme Court
F I L E D
APR 21 198

No. 80-1654

In the Supreme Court of the United States

OCTOBER TERM, 1980

JOHN RICHARD HUMPHRIES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1654

JOHN RICHARD HUMPHRIES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the evidence against him should be suppressed as the fruit of an illegal arrest.

Petitioner and four others were charged in a four-count indictment with conspiracy to import marijuana, in violation of 21 U.S.C. 963, 960(a)(1) and 952(a); conspiracy to distribute marijuana, in violation of 21 U.S.C. 960(a)(1) and (b) and 952(a); and attempted possession of marijuana with intent to distribute it, in violation of 21 U.S.C. 846 and 841(a)(1) and (b) and 18 U.S.C. 2 (Pet. App. 2a, 3a n.1).

Following two pretrial hearings, the United States District Court for the District of Arizona suppressed, as the fruit of an unlawful arrest, all evidence concerning petitioner's identity and participation in the charged offense. The court of appeals affirmed in part and reversed in part, 600 F. 2d 1238 (9th Cir. 1979) (reprinted in part at Pet. App. 22c-29c). In *United States* v. *Humphries*, 445 U.S. 956

(1980), this Court granted the government's petition for a writ of certiorari, vacated the judgment of the court of appeals, and remanded for reconsideration in light of *United States* v. *Crews*, 445 U.S. 463 (1980). On reconsideration, the court of appeals reversed the suppression order (636 F. 2d 1172; Pet. App. 1a-20a).

Petitioner now contends (Pet. 10-17) that the court of appeals misapplied the analysis of *United States* v. *Crews*, *supra*, and erroneously concluded that the order suppressing evidence should be reversed. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress the evidence. If petitioner is acquitted following a trial on the merits, his claims will be moot. If, on the other hand, petitioner is convicted, he will then be able to present his present contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. We note that the district court's order granting petitioner's suppression motion was entered more than three years ago, on January 26, 1978 (Pet. App. 2a). Final disposition of the case has been delayed since that time. There is no reason to prolong this delay further. See, *e.g.*, *United States* v. *MacDonald*, 435 U.S. 850, 863 (1978); *Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21, 29-30 (1943).[1]

---

[1] Because this case comes to the Court at an interlocutory stage, we do not discuss the merits of the questions presented in the petition. We will, of course, file a response on the merits if the Court requests.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

APRIL 1981

DOJ-1981-04